

H-1241

1 Amend House File 490 as follows:

2 <1. By striking everything after the enacting
3 clause and inserting:

4 <Section 1. NEW SECTION. 147.140 Expert
5 certificate of merit affidavit — health care providers
6 — requirements.

7 1. For purposes of this section, "*health care*
8 *provider*" means a physician or surgeon, osteopathic
9 physician or surgeon, dentist, podiatric physician,
10 optometrist, pharmacist, chiropractor, physician
11 assistant, or nurse licensed in this state, a hospital
12 licensed pursuant to chapter 135B, or a health care
13 facility licensed pursuant to chapter 135C.

14 2. a. In any action for personal injury or
15 wrongful death against any health care provider
16 based upon the alleged negligence of the licensee
17 in the practice of that profession or occupation,
18 or upon the alleged negligence of the hospital or
19 health care facility in patient care, which includes
20 a cause of action for which expert testimony is
21 necessary to establish a prima facie case, the
22 plaintiff shall, within one hundred eighty days of
23 the defendant's answer, serve upon the defendant an
24 expert's certificate of merit affidavit for each expert
25 listed pursuant to section 668.11 who will testify with
26 respect to the issues of breach of standard of care or
27 causation.

28 b. Each certificate of merit affidavit must be
29 signed by the expert. The affidavit must certify the
30 purpose for calling the expert by providing under the
31 oath of the expert all of the following:

32 (1) The expert's statement of familiarity with the
33 applicable standard of care.

34 (2) The expert's statement that the standard of
35 care was breached by the health care provider named in
36 the petition.

37 (3) The expert's statement of the actions that the
38 health care provider should have taken or failed to
39 take to have complied with the standard of care.

40 (4) The expert's statement of the manner by which
41 the breach of the standard of care was the cause of the
42 injury alleged in the petition.

43 c. A plaintiff shall serve a separate affidavit on
44 each defendant named in the petition.

45 d. Answers to interrogatories may serve as an
46 expert's certificate of merit affidavit in lieu of a
47 separately executed affidavit if the interrogatories
48 satisfy the requirements of this subsection and are
49 signed by the plaintiff's attorney and by each expert
50 listed in the answers to interrogatories and served

1 upon the defendant within one hundred eighty days of
2 service of the defendant's answer.

3 3. The expert's certificate of merit affidavit does
4 not preclude either of the following:

5 a. Additional discovery or modification of the
6 affidavit based upon the newly discovered evidence.

7 b. The disclosure of additional witnesses pursuant
8 to section 668.11.

9 4. The parties by agreement may provide for
10 extensions of the time limits specified in subsection
11 2.

12 5. a. Failure to comply with subsection 2 shall,
13 upon motion, be the basis for mandatory dismissal with
14 prejudice of each cause of action as to which expert
15 testimony is necessary to establish a prima facie case.

16 b. Failure to comply with subsection 2 because
17 of deficiencies in the affidavit or answers to
18 interrogatories shall, upon motion, be the basis for
19 mandatory dismissal with prejudice of each cause of
20 action for which expert testimony is necessary to
21 establish a prima facie case.

22 c. The motion to dismiss shall state with
23 particularity each deficiency of the affidavit or
24 answers to interrogatories in order to allow the
25 plaintiff to cure the deficiency.

26 d. The plaintiff shall have twenty days to respond
27 to the motion and to cure the alleged deficiencies with
28 supplemental affidavits.

29 e. A party resisting a motion for mandatory
30 dismissal pursuant to this subsection shall have the
31 right to request a hearing on the motion.

32 6. A party required to provide a certificate of
33 merit affidavit may be granted additional time to
34 file the certificate for good cause shown and upon
35 application to the court. Good cause shall include all
36 of the following:

37 a. The inability to timely obtain plaintiff's
38 medical records from medical providers when the records
39 have been requested prior to filing the action and not
40 produced.

41 b. The failure of the plaintiff to receive full
42 and complete responses to discovery requests from
43 a defendant within one hundred eighty days of a
44 defendant's answer.

45 c. The inability to obtain a defendant's deposition
46 after good faith efforts have been made to schedule
47 the deposition within one hundred eighty days of the
48 defendant's answer.

49 d. Other good cause based upon the circumstances
50 beyond the control of the plaintiff.

1 7. A defendant shall serve upon the plaintiff a
2 counter certificate of merit affidavit for any defense
3 raised by the defendant from each expert identified by
4 the defendant within ninety days of the plaintiff's
5 service of the certificate of merit affidavit or
6 service of answers to interrogatories stating the
7 opinion of the defendant's expert with the same degree
8 of particularity required of the plaintiff under oath
9 containing all of the following:

10 a. The expert's statement of familiarity with the
11 applicable standard of care.

12 b. The expert's statement of the standard of care
13 required of the defendant and that the standard of care
14 was not breached by the health care provider named in
15 the petition.

16 c. The expert's statement as to why the actions of
17 the health care provider complied with the standard of
18 care.

19 d. The expert's statement as to why the alleged
20 breach of the standard of care was not the cause of the
21 injury alleged in the petition.

22 8. The plaintiff shall have the right to file a
23 motion to strike defendant's expert identified by the
24 defendant pursuant to the same procedure provided for
25 in subsection 5, and the defendant shall be entitled to
26 the same process to respond to plaintiff's motion as
27 provided in subsection 5.

28 9. If the plaintiff is acting pro se, the plaintiff
29 shall sign the affidavit or answers to interrogatories
30 referred to in this section and shall be bound by those
31 provisions as if represented by an attorney.>

32 2. Title page, by striking line 1 and inserting
33 <An Act providing for certificate of merit affidavit
34 requirements in a medical>

SWAIM of Davis